SUPREME COURT, U.S.
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NO. 87-1193

in the

Supreme Court

of the

United States

October Term, 1987

THE MIAMI HERALD PUBLISHING COMPANY,

Petitioner,

vs.

THE HONORABLE WILLIAM CARTER GRIDLEY, PAULA HAWKINS, W. E. HAWKINS, COWLES BROADCASTING, INC., and CHANNEL TWO TELEVISION COMPANY OF FLORIDA,

Respondents.

RESPONDENTS', PAULA HAWKINS AND W. E. HAWKINS, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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47pp

INTRODUCTION

Three months ago, in *Palm Beach Newspapers, Inc. v. Burk*, Case No. 87-508, this Court denied an identical petition, filed by the same petitioner. That denial occurred on November 16, 1987, two months before the Miami Herald's petition in this case. *Palm Beach Newspapers, Inc. v. Burk*, ____ U.S. ____, 98 L.Ed. 2d 372, 108 S.Ct. 346 (1987). That fact is strangely absent from the petition in this case.

For all intents and purposes this case is a mirror image of *Burk*. The decision below involved the same issue and reached the same result. Indeed, the decision below is a simple affirmance on the authority of *Burk*. (A. 2-3). The sameness of this case to *Burk* is best demonstrated by the fact that the petition here is, in virtually all material parts, verbatim to the Miami Herald's *Burk* petition.

This petition does not claim any intervening circumstances since the *Burk* denial nor does it present any grounds not urged in *Burk*. It is then in reality an impermissible petition for rehearing of the denial of certiorari in *Burk*. Nonetheless, respondents must reply to this petition. They therefore restate the question as follows:

QUESTION PRESENTED FOR REVIEW

Whether news organizations have a First Amendment right enabling them to use the courts to gather news by compelling private litigants to disclose information exchanged between the litigants, which has not been made a part of any public record or judicial proceeding.

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RESPONDENTS', PAULA HAWKINS AND W. E. HAWKINS, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Respondents, Paula Hawkins and W. E. Hawkins, respectfully pray that the Petition for Writ of Certiorari filed by the Miami Herald Publishing Company be denied.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is remarkable for what it fails to disclose and for its continual efforts to try to recast this case as being one of a denial of "access." The news media, including petitioner, was never denied access to any judicial proceeding or to any court records and no amount of semantics can change that fact. The only denial in this case was of the news media's motion to compel the litigants to divulge private matters that had been exchanged between them.

Paula Hawkins was injured when a television studio set wall struck her during the taping of a T.V. talk show. Although the incident was recorded on videotape, the defendant television station impounded the tape and it has never been made public to this very day.

The Hawkins' lawsuit was filed in Orlando, Florida, in January 1986. It proceeded in orderly course until October 21, 1986. During those ten months, media representatives attended hearings and prominently reported events concerning the case. The media quoted from the pleadings and orders of the court and the information was distributed nationwide by Associated Press. (A. 28-40).[1] At no time during that ten month period did the media make any complaints concerning access.

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[1]Petitioners omitted material parts of the record from the Appendix they filed. Accordingly, the plaintiffs have filed a Supplemental Appendix A. Its numbering begins at A-21, so that it runs consecutively from the petitioner's Appendix. The newspaper clippings in respondents' Appendix are intended to be representative but not exhaustive of the media coverage.

On October 21, 1986, the Orlando Sentinel filed an unprecedented Motion to Intervene and Compel Access to Records. The Sentinel asked the trial court to force the parties to turn over to it (1) plaintiffs' answers to interrogatories, (2) transcripts of depositions of treating physicians, (3) all medical records, hospital records and hospital bills; and, (4) a videotape of the injury incident. The Sentinel contended that even though the documents and videotape had never been filed in any record or proceeding, they were "public records and should be made public under the Florida Public Records Law." Alternatively, the Sentinel contended that the materials "should be made public under the federal and Florida constitutional law." (A. 21-27).

The Sentinel did not seek the materials to understand Florida's judicial system. Its desire for the materials had nothing to do with the case or the court process but dealt solely with an upcoming election in which Mrs. Hawkins was a candidate for to the United States Senate. The election was only about two weeks away and the materials would, according to the Sentinel, reflect on either Mrs. Hawkins' physical fitness or her integrity. In the Sentinel's view, these were newsworthy matters and the Sentinel wanted the trial court's assistance in gathering the materials. As the Sentinel explained, the parties had refused its requests to voluntarily give it the materials. (A. 23).[2]

---

[2]Both plaintiffs and defendants refused to litigate their case in the news media. They had a constitutional right to do so. Wooley v. Maynard, 430 U.S. 705 (1977) (The First Amendment "includes both the right to speak freely and the right to refrain from speaking at all." Id. at 714).

The Sentinel therefore wanted to make the trial court its news gathering partner and have the trial court order the parties, under pain of contempt, to turn over the materials.

A week later, the petitioner herein, the Miami Herald Publishing Company, and the Florida Publishing Co. (Florida Times Union) jointly filed a similar motion. With the exception of the "public record" contention, which was omitted from the Miami Herald's motion, its position was identical to the Sentinel's. (A. 9-19). Although the defendants in the main case were also members of the media—the owners and operators of the Orlando television station where the injury occurred—they did not join in the motions and in fact opposed them.

It was then, as it is now, the intervenor news organizations' position that they have a right of unlimited access to any civil litigation, that they have the right to use the courts to gather news and that any civil litigant can be compelled to turn over to them whatever materials they wished. Both plaintiffs and defendants opposed the motions to intervene and compel. On hearing, the trial court granted the intervention but denied the motion to compel. (A. 7-8).

The intervenor news organizations then sought review of that order in the Fifth District Court of Appeal. The District Court denied their petition, noting that the intervenor news organizations did "not controvert the finding of [trial judge] that the requested materials have not been filed of record in the circuit court." (A. 5).

In June 1987, the Hawkins and the defendants in the main case reached an amicable settlement and their litigation was terminated. However, the news organizations continued with their efforts to reverse the denial of their motion to compel. In July 1987, with rehearing being denied in September 1987, the Florida Supreme Court approved the decision of the Fifth District Court of Appeal. (A. 3).

The Florida Supreme Court based its decision on its earlier decision in *Palm Beach Newspapers v. Burk*, 504 So2d 378 (Fla. 1987). In *Burk*, the Florida Supreme Court held that the press had no First Amendment right to participate in pretrial discovery or to obtain copies of depositions that were not filed with the court. *Id.* at 382. The *Burk* decision went on to hold that under Florida procedural law, common law and public records law there was likewise no right to participate in pretrial discovery. *Id.* at 383-84.

Because the Florida Supreme Court below simply relied on *Burk*, the petitioner's argument here is a virtual repeat of its petition in *Burk*. In view of the recent denial of the Miami Herald's petition in *Burk* and the lack of any new arguments in this petition, respondent requested that petitioner withdraw this petition. (A. 41-42). Petitioner has failed to do so.

REASONS FOR DENYING THE WRIT

This case presents no new issue that has not already been before this Court in *Burk* as well as a number of other decisions cited below. Beyond that, petitioner's principal argument—that this Court should grant the

writ so as to be able to give "guidance" to other courts—standing alone is not a proper basis for the granting of a writ. In an effort to avoid the pivotal issue of whether there is any First Amendment rights involved in this case, petitioner disingeniously paints with a broad brush. But, no amount of obfuscation can obscure the fundamental fact that there is no basis for certiorari unless the Florida Supreme Court transgressed controlling constitutional rights. That could not have occurred because it is clear that the news media has no First Amendment right to compel litigants to divulge information to them.

That is the express holding of some of the very cases cited by petitioner, a fact which petitioner fails to acknowledge. See *The Courier-Journal v. Marshall*, 828 F.2d 361 (6th Cir. 1987) ("The publisher's claim of a first amendment right of access to the fruits of discovery is equally unsound." *Id.* at 366); *In re Alexander Grant & Co. Litigation*, 820 F.2d 352 (11th Cir. 1987) (Newspaper publisher and journalist possess no First Amendment rights to examine discovery materials); *Anderson v. Cryovac*, 805 F.2d 1 (1st Cir. 1986) (There is no First Amendment right of access to documents considered in civil discovery motions); *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108 (3rd Cir. 1986) *cert. den.* ____ U.S. ____, 56 LW 3396 (Dec. 8, 1987) (Discovery process is not a forum traditionally open to the public and is a matter of legislative grace to which no First Amendment rights attach); and *In re Reporters Comm. for Freedom of the Press*, 773 F.2d 1325 (D.C. Cir. 1985) (No First Amendment right of access to pre-trial materials, principally depositions and discovery documents).

This Court has discussed the extent of news organizations' First Amendment rights concerning trial proceedings on several occasions. In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) this Court noted that the First Amendment did not confer any rights on the media concerning a trial greater than that of the general public.

> The First Amendment generally grants the press no right to information about a trial superior to that of the general public. . ." [T]he line is drawn at the courthouse door; and within, a reporter's constitutional rights are no greater than those of any other member of the public."

Id. at 609. See also *Branzburg v. Hayes*, 408 U.S. 665, 684 (1972) ("[T]he First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally.") It is stating the obvious to say that a general member of the public has no right whatsoever to intervene in private ligitation, much less compel production of materials from the litigant's lawyer's files.

More specifically, there is no constitutional right for either the public or the news media to participate in pretrial proceedings or discovery. In *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368 (1979) Chief Justice Burger noted in a concurring opinion that the draftsmen of the Constitution were well aware of pretrial proceedings:

> Yet no one ever suggested that there was any "right" of the public to be present at such pretrial proceedings as were available in that time; until the trial it could not be known whether and to what extent the pretrial evidence would be offered or received. Similarly, during the last 40 years in which the pretrial processes have been enormously expanded, it has never occurred to anyone, so far as I am aware, that a pretrial deposition or pretrial interrogatories were other than wholly private to the litigants. A pretrial deposition does not become part of a "trial" until and unless the contents of the deposition are offered in evidence.

Id. at 396.[3] *Gannett* did not specifically consider whether there was a First Amendment right of access. However, that issue was addressed in *Seattle Times Co. v. Rhinehart,* 467 U.S. 20 (1984). There this Court noted:

> [P]retrial depositions and interrogatories are not public components of a civil trial. Such proceedings were not open to the public at common law, and, in general, they are conducted in private as a matter of modern practice. Much of the information that surfaces during pretrial discovery may be unrelated, or

[3]A more detailed discussion of the historical nature of the discovery process, reaching the same conclusion, appears in In re Reporters Comm. for Freedom of the Press, 773 F.2d 1325, 1332-1336 (D.C. Cir. 1985) and Anderson v. Cryovac, 805 F.2d 1, 12-13 (1st Cir. 196).

> only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information. (Citations omitted.)

Id. at 33. As noted by this Court in *Zemel v. Rusk,* 381 U.S. 1 (1965):

> The [First Amendment] right to speak and publish does not carry with it the unrestrained right to gather information.

Id. at 17.

Several other decisions have come to the same conclusion. See *United States v. Gurney,* 558 F.2d 1201 (5th Cir. 1977) holding that the news media's right

> to gather news has been defined in terms of information available to the public generally. . . . The Constitution does not . . . require government to accord the press special access to information not shared by members of the public generally. . . . The documents sought by appellants were not part of the public record. In keeping with present Supreme Court guidelines, we do not think that the press had any First Amendment right of access to those matters not available to the public.

Id. at 1208, 1209.

To the same effect are *Booth Newspapers, Inc. v. Midland Circuit Judge,* 377 NW 2d 868 (Mich. Ct. App. 1985) *leave to appeal den.,* 425 Mich. 854 (Mich. 1986), *cert. den.,* 107 S.Ct. 877 (1987), (Press has no right, either constitutionally or via common law, to compel disclosure of pretrial discovery information); *Lewis R. Pyle Memorial Hospital v. Superior Court,* 717 P.2d 872 (Ariz. 1986) (Pretrial depositions are not public proceedings and neither the public nor press has any right, constitutional or other wise to attend); *Oklahoma Hospital Association v. Oklahoma Publishing Co.,* 748 F.2d 1421 (10th Cir. 1984) *cert. den.* 473 U.S. 905 (1985) (Press has no First Amendment right to compel litigants to disseminate information they have obtained through litigation processes).

Petitioner seems to be arguing that this Court should extend a First Amendment right, even though none may have existed before. Such a judicial redrafting of the Constitution would fly in the face of established precedent. In *Richmond Newspapers, Inc. v. Virginia,* 488 U.S. 555 (1980) this Court held that in deciding the scope of First Amendment rights with reference to judicial proceedings two inquiries must be made: (1) has the particular stage of the proceedings historically been open and (2) is a right of access essential to the proper functioning of the judicial process.

Apart from the lack of any historical precedent for compelling disclosure of discovery proceedings and matters, public access to discovery materials is not essential to an understanding or proper functioning of the judicial process. *In re Reporters Comm. for Freedom of the Press, supra* at 1337. Indeed, the Miami Herald

did not want the materials concerning Mrs. Hawkins for any purpose connected with the judicial process. They wanted the materials for the ulterior purposes of the elective process.

In sum, there is no First Amendment right for either news organizations or the public to compel private litigants to divulge discovery materials. That is as it should be. If the news media, or for that matter the public, had even a qualified right to compel disclosure of discovery materials, litigation would become infinitely more complex and burdensome. Such a rule would portend a staggering increase in the amount and cost of litigation. Since litigants would never know in advance when the media might seek information, such an eventuality would have to be considered in every case. If a party had any conceivable concern about disclosure, a motion would have to be filed, notice would have to be given to the media and a hearing would have to be held. If the media were dissatisfied with the amount or timing of discovery, other motions or appeals would follow. The result would be congestion, perhaps even havoc in the system. The costs would be incredible. The amount of judicial time that would be consumed is incalculable. And, all of this would come at a time when the courts are already over crowded. See *Anderson v. Cryovac, supra* at 12; *In re Reporters Comm. for Freedom of the Press, supra* at 1338; *Palm Beach Newspapers v. Burk,* 471 So2d 571, 579 (Fla. 4 DCA 1985).

There is another more subtle but potentially more insidious effect that could result. Such a rule would make the courts a tool for information gathering.

Through the court processes—subpoenas, contempt orders, sanctions, etc.—the media would have an extremely powerful club to force the disclosure of information. What then would happen to the public's confidence in the judicial system?

CONCLUSION

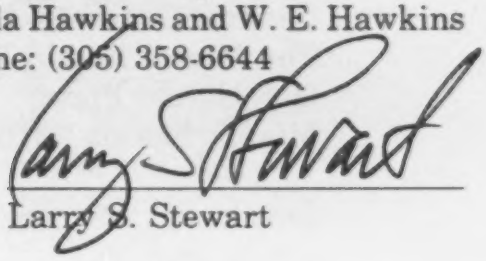
There is no First Amendment right to allow news organizations to compel private litigants to divulge information. There is likewise no conflict of decisions. The decision below is simply an application of state court decisional law, that conflicts with no constitutional principle or federal law. Accordingly the petition should be denied.

RULE 49.2 DAMAGES

By any standard this case is a classic example of a frivolous petition. It makes a mockery of any concept of finalty. If this petition were filed by someone other than the Miami Herald, it would constitute outright plagiarism of the Herald's *Burk* petition. If this petition were filed as a petition for rehearing in *Burk,* it would constitute a blatant violation of Rule 51.2. In view of the denial of certiorari in *Burk* just two months before, this petition is groundless, lacking in legal sufficiency and it unwarrantedly consumes the parties and Court's time. For these reasons, the respondent requests that this Court assess Rule 49.2 damages, together with the costs of this brief in opposition. Respondents have not incurred any delay damages since the underlying case has long since been resolved. Under those circumstances, respondents respectfully submit that an

amount of damages equal to a reasonable attorney's fee for this proceeding would be an appropriate amount of damages to be assessed.

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By 
Larry S. Stewart

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Brief in Opposition was served February 19, 1988, in accordance with Rule 28.1 of the Rules of the Supreme Court of the United States by depositing three true copies in a United States post office or mailbox, with first-class postage prepaid, addressed to:

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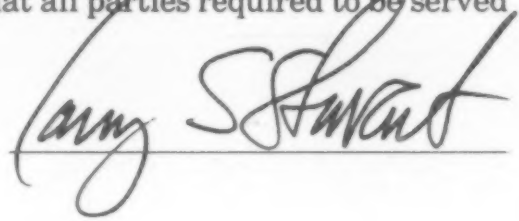
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Appendix

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE, COUNTY, FLORIDA

CASE NO. CI-86-41

PAULA HAWKINS, and W. E. HAWKINS,
her husband,

Plaintiffs,

vs.

COWLES BROADCASTING, INC. and CHANNEL
TWO TELEVISION COMPANY OF FLORIDA,

Defendants,

**SENTINEL COMMUNICATIONS COMPANY'S
AND L. JOHN HAILE'S MOTION TO
INTERVENE AND MOTION TO COMPEL
ACCESS TO RECORDS**

COME NOW Movants SENTINEL COMMUNICATIONS COMPANY ("SENTINEL") and L. JOHN HAILE ("HAILE"), by and through their undersigned attorneys, and file this Motion to intervene and Motion to Compel Access to Records. In support of said Motions, Movants allege as follows:

1. Movant SENTINEL, a Delaware corporation with its principal place of business in Orange County, Florida, is the publisher of *The Orlando Sentinel*, a daily newspaper of general circulation in Central Florida.

2. Movant HAILE is a resident of Seminole County, Florida and is the Editor of *The Orlando Sentinel.*

3. Plaintiff PAULA HAWKINS is a United States Senator for the State of Florida currently running for reelection in the November 4, 1986 Florida general election. Plaintiff W. E. HAWKINS is the husband of PAULA HAWKINS.

4. Defendant CHANNEL TWO TELEVISION COMPANY OF FLORIDA was, at times relevant to this lawsuit, the owner of WESH-TV Channel 2, a television broadcasting station licensed by the Federal Communications Commission.

5. Movants have verbally requested of counsel for Defendants access to discovery materials delivered to Defendants pursuant to discovery demands in this lawsuit, to wit:

a. Plaintiffs' Answers to Interrogatories;

b. Transcripts of depositions of treating physicians of PAULA HAWKINS, a/k/a Paula Mandell; and

c. Medical records, hospital records, and hospital bills for PAULA HAWKINS, a/k/a Paula Mandell.

Movants have also requested access to the videotape of the incident in which PAULA HAWKINS was injured, copies of which tape have been provided by Defendants to Plaintiffs. In addition to the foregoing verbal requests, Movant SENTINEL has requested, in writing, access to Plaintiff's Answers to Interrogatories. The letter of request for such records is attached hereto as Exhibit "A".

6. Movants' requests for access to the foregoing records have been refused.

7. The records requested by Movants are public records and should be made public under the Florida Public Records Law (Chapter 119, Florida Statutes). All documents placed in a court file are public records available for public inspection. Prior to recent amendments to the Florida Rules of Civil Procedure, answers to interrogatories and deposition transcripts were filed in court files as a matter of course. The amendments to the Rules which abrogated the filing requirements were house keeping measures designed to ease file storage problems by decreasing the size of court files. The Rule amendments were not intended to make private records which were once public.

8. The records requested by Movants are public records and should be made public under Florida common law. Courts in the State of Florida have established, under the common law, a strong presumption of public access to the judicial system, including judicial proceedings and records. This presumption is particularly compelling, where, as in the case at bar, the records in question pertain to a matter

of the gravest public interest and concern, to wit: the health and fitness to serve of an individual seeking election as a United States Senator.

9. The records requested by Movants should be made public under federal and Florida constitutional law. The United States Supreme court has recognized news-gathering as a constitutionally protected activity. *Richmond Newspapers, Inc. v. Commonwealth of Virginia*, 448 U.S. 555 (1980). The First Amendment implies the public's right to know, particularly under the unusual facts of this case.

10. The public policy of the State of Florida demands that the records requested by Movants be made public. Millions of Florida voters will cast their ballots on November 4, 1986 in the election for United States Senator. Florida voters have a compelling right to know the physical condition and fitness of PAULA HAWKINS as the incumbent candidate for that office. Florida voters have a compelling right to know whether PAULA HAWKINS has described her physical condition to the electorate of this State in a manner inconsistent with her sworn answers to interrogatories made under oath in this case. There can be no more substantial and compelling public interest than the interest of the voting public in being fully informed with respect to the integrity and the health and fitness of a candidate for the office of United States Senator.

11. For the reasons set forth above, Movant HAILE, as a taxpayer, voter, and member of the public, and Movant SENTINEL, as a newspaper publisher, have a direct and immediate interest in this pending litigation.

WHEREFORE, Movants respectfully request that this Honorable Court grant their Motion to Intervene and allow them to intervene in this case for purposes of pursuing their Motion to Compel Access to Records. Movants further request this Honorable Court to enter its order compelling the parties in this case to make available to Movants for inspection and copying the records referred to in Paragraph 5 above.

Respectfully submitted,

/s/ William G. Mateer, Esquire
WILLIAM G. MATEER, ESQUIRE

/s/ David L. Evans
DAVID L. EVANS, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, this 21st day of October, 1986, by United States mail and by Airborne Express to LARRY S. STEWART, ESQUIRE, Stewart, Tilghman, Fox & Bianchi, P.A., 44 West Flagler Street, Suite 1900, Miami, Florida 33130, and by hand delivery to ALTON G. PITTS, ESQUIRE, 605 East Robinson Street, Orlando, Florida 32814.

/s/ David L. Evans

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EXHIBIT "A"

The Orlando Sentinel
633 North Orange Avenue
Orlando, Florida 32801

October 16, 1986

Mr. Alton Pitts
P.O. Box 20154
Orlando, Florida 32814

Re: Hawkins v. WESH

Dear Mr. Pitts:

I am writing to request an opportunity to review the Answers to Interrogatories filed by Paula Hawkins.

As you know, the answers are not filed in the courthouse pursuant to procedure rules. However, when the Supreme Court revised those rules for housekeeping reasons, there was no intention stated that such documents would suddenly not be public record.

So I am left with depending upon the lawyers to release discovery documents previously considered public record.

I would appreciate a response from you by phone or writing as soon as possible.

Respectfully yours,

Craig Crawford,
Legal Affairs Reporter
305/420-5360

cc: Larry Stewart
David Evans

ORLANDO SENTINEL 1-4-86



Hawkins

Hawkins sues WESH over 1982 studio prop accident

By Dan Tracy

OF THE SENTINEL STAFF

U.S. Sen. Paula Hawkins filed a negligence suit Friday against WESH-Channel 2 for injuries she suffered four years ago when a studio backdrop fell on her while she was being interviewed at the Winter Park television station.

Hawkins, 58, was knocked unconscious briefly when a 28-pound, 6-foot-high wood and canvas prop toppled onto her neck and shoulders on Jan. 4, 1982.

She was hospitalized in Orlando for eight days. Hawkins complained then of neck and back pains, memory lapses and an inability to focus her eyes. She wore a neck brace for several months.

In her suit filed in Orange County Circuit Court, Hawkins contends she still feels pain and cannot work as well as she could before the mishap. The suit asks for more than $5,000, the minimum amount that can be requested in a civil action.

Hawkins charged that her husband has lost "the services of his wife and he has in the past and will in the future suffer a loss of the consortium and society of his wife."

The Republican senator from Winter Park did not return several calls, but an aide, Kevin Childers, said Hawkins sometimes is in "acute" pain, particularly after a long day in the Capitol.

"She is in traction practically every night," said Childers.

Hawkins has traction equipment in her Watergate Hotel apartment in Washington to help in the

Please see **HAWKINS, A-9**

From A-1

rehabilitation process, Childers said. She also had a small private room in the Capitol basement where she put herself in traction if necessary while the Senate was in session. Childers said Friday he "couldn't confirm" whether it is still there.

Hawkins has said frequently that the injury is aggravated by long hours of work and airline flights because of the pressure on her neck and spinal column during takeoffs and landings.

The statute of limitations for negligence suits runs out after four years. Today is the fourth anniversary of Hawkins' accident.

Childers said Hawkins' attorney, Larry Stewart of Miami, may still try to negotiate an out-of-court settlement.

"The senator trusts that in time things will be resolved between her and Channel 2," he said.

WESH station manager John E. Evans said he was not surprised by the suit.

"This is the way you pursue these things. I don't think it shows any hostile feelings towards us on her part. It certainly doesn't on our part," Evans said.

WESH has paid for some of her hospitalization costs, he said. "This is why you carry insurance," Evans said.

The station has attempted in vain to work out a settlement since the accident, Evans said. He would not disclose the amounts discussed.

Hawkins underwent surgery in 1960 to fuse a disc in her neck after an automobile accident and has refused a second operation to alleviate the pain she now feels. That operation would have only a 50 percent chance of success.

Childers said Hawkins' physical problems will not stop her from seeking re-election this year. She has raised more than $3 million for the race against Democratic Gov. Bob Graham, who is expected to announce his candidacy later this month.

Sentinel *Washington correspondent Anne Groer contributed to this report.*

orlando sentinel 2-19-86

Senator's doctor: Job delays healing



Hawkins

By Craig Crawford

OF THE SENTINEL STAFF

U.S. Sen. Paula Hawkins sought medical treatment at a North Carolina hospital last week because pressures on the job have delayed her recovery from an old neck injury, her Orlando physician said Tuesday.

"She called from Washington and said, 'I'm ready for Duke,'" said Dr. Ed Farrar, who has long urged Hawkins to undergo treatment at the Duke University Medical Center in Durham, N.C.

Farrar has treated Hawkins since January 1982 when she was struck on the neck and knocked unconscious by a falling prop at the Winter Park studio of WESH-Channel 2. He examined her twice in Washington and set up traction equipment in her Watergate apartment in Washington.

But Hawkins' rehabilitative progress was slowed by long hours of work, aggravated by a stepped-up campaign schedule in her re-election bid against Gov. Bob Graham, Farrar said.

"She has not achieved the medical goals I set for her," said Farrar, explaining that she suffers constant pain in her neck and lower back and has not regained a normal range of motion in those areas of her body.

Hawkins told reporters at a Senate hearing in Fort Lauderdale Monday that she was "as strong as ever," and she denied rumors that she has been addicted to pain-killing drugs.

Farrar said he occasionally alternated the types of muscle relaxant medications he prescribes for Hawkins because her body has "adapted" to the medicine, developing a tolerance for it.

He explained that after continued use, a certain amount of medication is no longer enough to relieve pain. Instead of increasing the dosage, Farrar said he has switched medications.

"It's like an alcoholic," said Far-

Please see **HAWKINS, A-9**

HAWKINS

From A-1

rar, "when two drinks won't do what two drinks used to do."

He suggested treatment at Duke several months ago because "they do the best work-up [treatment] on necks of anybody on the Eastern Seaboard."

In a press conference in Durham last Wednesday, Dr. Blaine S. Nashold Jr., a Duke University neurosurgeon, said he would decide this week whether surgery is necessary.

Farrar had no comment about Nashold's findings because he has not received a report of the examination. He will testify in a deposition in March that is part of a negligence suit Hawkins filed against WESH.

In the Orange Circuit Court suit, Hawkins claimed she still feels pain and cannot work as well as she could before the accident.

The television station filed an answer to the complaint last week admitting that Hawkins was injured in the studio but denying negligence for the accident.

"That's just the lawyers going through their ritual dance," said John Evans, WESH station manager.

Hawkins filed the suit in January the day before the fourth anniversary of the accident. Florida's statute of limitations prevents the filing of a negligence lawsuit more than four years after an accident.

Last December Hawkins asked for a financial settlement from the television station, said Al Pitts, WESH's attorney. He said the station, which has paid Hawkins' medical bills, rejected the amount she proposed and made no counteroffer.

"It was a huge figure," said Pitts, who would not state the amount.

Hawkins' attorney, Larry Stewart of Miami, would not comment about the case, saying, "I'm not going to try this lawsuit in the press."

Her top aide, Tom Kleppe, said he knew nothing about a settlement demand.

The uncertainty about Hawkins' future medical treatment prevents a settlement of the lawsuit, said Pitts.

"Until her medical situation is resolved, we cannot evaluate the case," he said. The suit is further complicated by questions about how much her current condition stems from 1960 neck surgery following an automobile accident, Pitts said.

Florida News

Senator mentions surgery at Easter

Associated Press

U.S. Sen. Paula Hawkins, R-Fla., who was recently hospitalized for chronic back and neck pain, says she might undergo corrective surgery around Easter.

"I won't know until next month about a definite date, but I suspect sometime around Easter break it might occur," Hawkins said at a Republican dinner Saturday in Punta Gorda.

The 59-year-old, first-term senator injured her neck and back 20 years ago in an automobile accident. The injury was aggravated four years ago when a backdrop fell on her at an Orlando television station where she was taping an interview.

Hawkins filed a lawsuit against WESH-Channel 2 alleging permanent or continuing injuries were caused by the backdrop and have impaired her ability to work.

Hawkins, whose bid for re-election is being challenged by Democratic Gov. Bob Graham, has said she will not withdraw from the race for medical reasons.

Living 'in chronic pain' a way of life for Hawkins

Associated Press

U.S. Sen. Paula Hawkins said the constant pain she lives with will not stop her campaign for a second term.



Hawkins

"Being in chronic pain is part of living. I believe it sharpens your wit, drives you further. You work harder," said the Florida Republican, who was recently hospitalized for back and neck pain.

Hawkins, who faces Democratic challenger Gov. Bob Graham in her re-election bid, also said she might undergo corrective surgery during the Easter holiday.

"I won't know until next month about a definite date, but I suspect sometime around Easter break it might occur," Hawkins said at a weekend Republican dinner in Punta Gorda.

The 59-year-old senator injured her neck and back 20 years ago in an automobile accident. The injury was aggravated four years ago when a backdrop fell on her at an Orlando television station while she taped an interview.

Hawkins has sued WESH-Channel 2, alleging permanent or continuing injuries were caused by the backdrop and have impaired her ability to work.

ORLANDO SENTINEL 3-20-86

MARCH 20, 1986

Channel 2 says Hawkins' bills have been paid

By Craig Crawford

OF THE SENTINEL STAFF

WESH-Channel 2 already has paid more than $11,000 in medical expenses to U.S. Sen. Paula Hawkins and would pay more if she submitted the bills, according to a document filed by the television station in Hawkins' negligence lawsuit against it.



Hawkins

The station, sued in Orange Circuit Court last January, has admitted that the Winter Park Republican was injured when a studio backdrop fell on her during an 1982 interview but denied any negligence.

Hawkins provoked a dispute over the medical bills last February when she claimed on the *CBS Morning News* that she had to file suit "since the TV station has not paid our bills."

That statement brought a sharp response from station manager John E. Evans, who said the bills were paid until

Please see **HAWKINS, B-3**

BEST AVAIL

HAWKINS

From B-1

Hawkins quit submitting them in 1984.

Hawkins' husband, Gene, then called Evans to apologize that the senator's remarks were misinterpreted, Evans said.

Evans said that medical bills submitted by Hawkins after a 1984 automobile accident in Washington, D.C., were rejected by the station's insurance company. Hawkins was a passenger in a car that was struck from behind by a taxi. She continued to the airport for a flight to Tampa.

When the plane landed, Hawkins, who complained of severe headaches from the auto accident, was transferred to a Coast Guard plane that took her to Orlando, where she was admitted to Orlando Regional Medical Center. She was released the next day.

Evans said the station's insurance carrier, Zurich-American Insurance Companies, contended that medical bills for Hawkins' injuries from the automobile accident were "hard to relate to the accident at our place."

Hawkins' history of neck and back problems has complicated efforts to blame her pain solely on the Channel 2 accident.

She underwent surgery in 1960 to fuse a disc in her neck after an automobile accident.

Legal and medical experts say it is difficult to distinguish how much of her pain is caused by the different accidents.

The lawsuit has put Hawkins in the position of maintaining that she is healthy enough to be a senator and an active campaigner against Democratic challenger Gov. Bob Graham while arguing in court that her injuries were severe enough to justify the damages she is seeking.

In the suit Hawkins contends she still feels pain and cannot work as well as she could before the mishap.

On the campaign trail Hawkins has called questions about her health a "false issue." She calls the legal claims about her injuries "just boilerplate language."

Hawkins entered Duke University Medical Center under an assumed name Feb. 6 while her Senate and campaign staff insisted she was vacationing. The full story finally emerged that weekend, and on Feb. 12 her physician held a press conference to discuss possible surgery.

She went to Duke because her Orlando physician, Dr. Ed Farrar, was dissatisfied with her progress.

"She has not achieved the medical goals I set for her," said Farrar in an interview earlier this month. He explained that Hawkins suffers constant pain in her neck and lower back and has not regained a normal range of motion in those areas of her body.

Farrar said recently that his lawyer had advised him not to talk about the case.

"I probably shouldn't have said anything the first time," Farrar said.

Evans said in an interview Tuesday that Hawkins' lawyer, Larry Stewart of Miami, persuaded Channel 2 attorney, Al Pitts, to cancel appointments for later this month to take the sworn testimony of Farrar and Gene Hawkins. Both attorneys have refused to comment about the case.

Evans said the station will ask for an early trial date in the suit.

ABLE COPY

TV station disputes Hawkins

ORLANDO — An Orlando television station says it has paid $11,000 in medical bills submitted by U.S. Sen. Paula Hawkins, R-Fla., as a result of a studio accident that injured her neck during a 1982 interview show.

Hawkins has sued WESH-Channel 2 for damages, claiming negligence.

The station, which has admitted she was injured when a studio backdrop fell on her but has denied any negligence, said in documents filed in Circuit Court that her medical bills were paid until she stopped submitting them in 1984.

Hawkins provoked a dispute over the medical claims when she said on *CBS Morning News* that she had to file suit "since the TV station has not paid our bills."

BEST AVAILA

ORLANDO SENTINEL 10-14-86

Hawkins' suit set for Dec. 9

WESH lawyer attacks her request for delay

By Craig Crawford

OF THE SENTINEL STAFF

A trial in U.S. Sen. Paula Hawkins' negligence lawsuit against WESH-Channel 2 is set for mid-December, but the station's lawyer charges that the senator misled the court to avoid a trial before the Nov. 4 election.

Orange Circuit Judge William Gridley settled a standoff between lawyers for both sides by agreeing to a Dec. 9 trial date. Hawkins' lawyers had said in court documents that the senator could not attend an earlier trial because she is still recuperating from neck surgery.

But WESH lawyer Al Pitts said

On the campaign trail: B-1

that claim does not jibe with what Hawkins says on the campaign trail.

"Mrs. Hawkins is trying to eat her cake and have it too," said Pitts in a document opposing a post-election trial date. He could not be reached for comment Monday.

"She is telling the public that she is able to run a re-election campaign and garner contributions and perform her services as a U.S. senator, while at the same time she is saying in this lawsuit that she has sustained a major disability," said Pitts. "Justice requires that Mrs. Hawkins take a public stand one way or another."

Hawkins, a Republican from Winter Park who is seeking her second term, was campaigning Monday in Tampa and had no comment. Her attorney, Larry Stewart of Miami, has refused to discuss the case.

"Nobody with the campaign is involved in the lawsuit and no one can comment," said Hawkins campaign manager Charles Black in Washington, D.C.

Hawkins sued WESH in January, claiming she was permanently injured in 1982 when a prop fell and struck her on the neck at the station's Winter Park studio.

In the suit she said she still feels pain and cannot work as well as she could before the accident. Her husband Gene also filed suit against the station, claiming the loss of his wife's "consortium and companionship." In March the senator called the legal claims "just boilerplate language."

Last April doctors at Duke University Medical Center operated twice on vertebrae in the senator's neck to relieve chronic pain.

The lawsuit has put Hawkins in the position of maintaining that she is healthy enough to be a senator and an active campaigner against Democratic challenger Gov. Bob Graham while arguing in court that her injuries were severe enough to justify the damages she is seeking.

In 1985, WESH rejected Hawkins' demand for a financial settlement and made no counteroffer.

Please see **SUIT, A-7**

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SUIT

From A-1

"Mrs. Hawkins is holding out for big money against the defendant," said Pitts in a court document. "The court should not allow her to have it both ways."

Gridley gave no reason for granting the request last week by Hawkins' attorney that the trial be held in December. Gridley also could not be contacted Monday.

Graham campaign officials had no comment about Pitts' charges, but did point out that Hawkins has been well enough for extensive traveling.

"She managed a grueling three-day tour last week in New York promoting her book," said Graham consultant Robert Squier in Washington, D.C. Hawkins and a ghostwriter recently published a book about child abuse.

Pitts has subpoenaed about 20 doctors and hospital representatives for medical records on "Paula Hawkins aka Paula Mandell." The senator has been using the assumed name for her medical treatment.

The station's insurance carrier, Zurich-American Insurance Companies, paid more than $11,000 in medical expenses to Hawkins until she stopped submitting bills.

Hawkins' history of neck and back problems has complicated efforts to blame her pain solely on the WESH accident.

She underwent surgery in 1960 to fuse a disc in her neck after an automobile accident.

In 1984 she was hospitalized for complaints of severe headaches after an automobile accident in Washington.

MIAMI HERALD 10-15-86

Campaign '86

Notes & Comments

★ ★ ★

Although the senator's day of reckoning comes Nov.4, her day in court has been set for Dec. 9. Arguments that day begin in Hawkins' physical injury lawsuit against an Orlando television station on which she was a guest in 1982 when a prop fell over on her. She claims that because of the mishap, she continues to suffer pain and cannot work to her previous capacity.

Husband Gene Hawkins has filed a separate suit, claiming the loss of his wife's "consortium and companionship."

WESH-TV lawyer Al Pitts said in a brief, however, that her campaign undermines her claims. "She is telling the public that she is able to run a re-election campaign and garner contributions and perform her services as a U.S. senator, while at the same time she is saying in this lawsuit that she has sustained a major disability," Pitts said.

★ ★ ★

Hawkins' surgery delays suit against Channel 2



Hawkins

By Craig Crawford

OF THE SENTINEL STAFF

An Orange Circuit Court judge on Wednesday delayed the trial of former U.S. Sen. Paula Hawkins' lawsuit against WESH-Channel 2 after learning that Hawkins' surgery earlier this week would prevent her from attending the trial.

The trial, which was set for Jan. 22, will be rescheduled for the spring, said Judge William Gridley. He did not set a date.

Gridley responded to requests for delays from attorneys for both Hawkins and WESH.

Hawkins, 59, was recovering Wednesday after four hours of surgery on her lower back at Duke University Medical Center in Durham, N.C. Her husband, Gene, said she is expected to remain hospitalized for eight to 12 days before returning to her home in Winter Park.

The operation Tuesday was Hawkins' third since April to relieve pain she has suffered since a studio backdrop fell on her during a 1982 interview at WESH's Winter Park studio.

Hawkins sued WESH in January 1986, accusing the station of negligence and claiming that she still felt pain and could not work as well as she could before the accident. Gene Hawkins also sued the station, claiming the loss of his wife's "consortium and companionship."

"After seeing news reports of the operation I assumed the delay was necessary," Gridley said Wednesday. "Then I received a call today confirming it."

The delay is the third since the case was first set to be tried in October. Gridley agreed then to move the trial to Dec. 9 at the request of Hawkins' attorney, Larry Stewart. He argued that Hawkins' pain and campaign schedule prevented her from attending a trial before the Nov. 4 Senate election. Former Gov. Bob Graham won the election and was sworn in as a U.S. senator this week.

After Hawkins' defeat, Gridley granted another delay requested by Stewart, this time rescheduling the trial for Jan. 22. Stewart again said in court documents that Hawkins' continuing medical treatment prevented her from attending the trial.

In Tuesday's surgery, doctors removed fragments of a disc that were touching nerves and causing pain. They also took bone from the hip and fused two sets of vertebrae in her back.

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February 10, 1988

HAND DELIVERED
Mr. Gerald Cope, Jr.
Greer, Homer, Cope & Bonner, P.A.
4870 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131

Re: The Miami Herald Publishing Co. v. Gradley
Case No. 87-1193

Dear Mr. Cope:

In preparing our respondent's brief, we discovered that the United States Supreme Court denied the Miami Herald's petition for certiorari in *Palm Beach Newspapers, Inc. v. Burk* on November 16, 1987. As a result of bringing that to your attention yesterday, you have corrected the citation in your brief.

I have now reviewed the Miami Herald's petition for certiorari in the *Burk* case. It is substantially identical to the petition in this case. In view of the denial of certiorari in *Burk*, before we invest any more time, effort and costs, I respectfully suggest to you that you should withdraw the petition in this case. If the Miami Herald elects to continue with this petition, we will submit to the Court that it is a "frivolous" petition within the meaning of Rule 49.2 of the Supreme Court Rules and seek appropriate damages from the Court.

Very truly yours,

/s/ LARRY S. STEWART
Larry S. Stewart

LSS:jc
cc: Laura Besvinick
Richard Ovelmen